

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/CS/HB 1475 Hemp

**SPONSOR(S):** Infrastructure Strategies Committee, Agriculture, Conservation & Resiliency Subcommittee, Robinson, W., Cassel, and others

**TIED BILLS:** **IDEN./SIM. BILLS:** CS/SB 1676

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Agriculture, Conservation & Resiliency Subcommittee	15 Y, 2 N, As CS	Gawin	Moore
2) Agriculture & Natural Resources Appropriations Subcommittee	12 Y, 3 N	Byrd	Pigott
3) Infrastructure Strategies Committee	19 Y, 0 N, As CS	Gawin	Harrington

### SUMMARY ANALYSIS

Hemp, also called industrial hemp, is defined as the plant *Cannabis sativa L.* and any part of that plant, including seeds, derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers thereof, whether growing or not, with a delta-9 tetrahydrocannabinol (THC) concentration that does not exceed 0.3 percent on a dry weight basis. Hemp is used to create hemp extract, which is defined as “a substance or compound intended for ingestion, containing more than trace amounts of cannabinoid, or for inhalation which is derived from or contains hemp and which does not contain other controlled substances.” In 2019, the Legislature created the State Hemp Program within the Department of Agriculture and Consumer Services (DACS), which authorizes the cultivation of hemp and sale of hemp extract products.

Hemp extract products are available throughout the state in various forms including, but not limited to, oils, lotions, and gummies. Hemp extract products are only authorized to be distributed in the state if the product meets certain requirements established by DACS. Hemp extract products meant for inhalation may not be sold to individuals under the age of 21.

The bill revises definitions of food, hemp, and hemp extract and defines attractive to children.

The bill requires any hemp extract that will be distributed and sold in the state to have come from a batch processed in a facility permitted by a human health or food safety regulatory entity and that meets human health or food safety sanitization requirements.

The bill requires hemp extract to be distributed and sold in a container that is suitable to contain products for human consumption, is composed of materials designed to minimize exposure to light, mitigates exposure to high temperatures, is not attractive to children, and is compliant with the United States Poison Prevention Packaging Act of 1970. The bill specifies that hemp extract may only be sold to a business in the state if that business is properly permitted.

The bill specifies that hemp extract products intended for human ingestion may not be sold to anyone under 21 years of age.

The bill requires DACS to adopt rules for the State Hemp Program that provide packaging and labeling requirements.

The bill may have an indeterminate negative fiscal impact on state government and the private sector.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### Background

##### Hemp

Hemp, also called industrial hemp, is defined as the plant *Cannabis sativa L.* and any part of that plant, including seeds, derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers thereof, whether growing or not, with a delta-9 tetrahydrocannabinol (THC) concentration<sup>1</sup> that does not exceed 0.3 percent on a dry weight basis.<sup>2</sup> While hemp and marijuana are both grown from the *Cannabis sativa L.* plant, they are different varieties that have been genetically bred and grown for different uses. Hemp can be distinguished from marijuana<sup>3</sup> by its lower concentrations of THC, and higher concentrations of cannabidiol (CBD).<sup>4</sup> CBD does not have psychoactive properties like marijuana does and does not produce a “high.”<sup>5</sup> Hemp is used to create hemp extract, which is defined as “a substance or compound intended for ingestion, containing more than trace amounts of cannabinoid, or for inhalation which is derived from or contains hemp and which does not contain other controlled substances.”<sup>6</sup> The term does not include synthetic CBD or seeds or seed-derived ingredients that are generally recognized as safe by the United States Food and Drug Administration.<sup>7</sup>

##### Hemp Cultivation

The Agricultural Act of 2014 authorized an institution of higher education or a state department of agriculture to grow or cultivate industrial hemp if it is grown or cultivated for research conducted under an agricultural pilot program or other agricultural or academic research program provided the growing or cultivating of industrial hemp is allowed under state law where the university or state department of agriculture is located.<sup>8</sup>

In 2017, the Legislature authorized the Department of Agriculture and Consumer Services (DACS) to oversee the development of industrial hemp pilot projects for the Institute of Food and Agricultural Science (IFAS) at the University of Florida, Florida Agricultural and Mechanical University, and any land grant university in the state that has a college of agriculture.<sup>9</sup> The purpose of the pilot projects was to cultivate, process, test, research, create, and market safe and effective commercial applications for industrial hemp in the agricultural sector.<sup>10</sup>

Section 10113 of the Agriculture Improvement Act of 2018 (2018 Farm Bill) created the Hemp Farming Act to allow the cultivation of hemp beyond industrial hemp pilot programs. The 2018 Farm Bill removed hemp-derived products from Schedule I of the Controlled Substances Act. While the law

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<sup>1</sup> “Total delta-9 THC concentration” means delta-9 THC + (0.877 x THC acid), r. 5B-57.014(1)(i), F.A.C.

<sup>2</sup> 7 U.S.C. s. 5940 (2014); 7 U.S.C. s. 1639o (2018); “Dry weight basis” refers to a method of determining the percentage of a chemical in a substance after removing the moisture from the substance. Percentage of THC on a dry weight basis means the percentage of THC, by weight, in a cannabis item (plant, extract, or other derivative), after excluding moisture from the item. 7 C.F.R. s. 990 (2021).

<sup>3</sup> Marijuana is identified in the United States drug laws as cannabis having high THC levels that are associated with psychotropic effects and is typically made from the flowering tops and leaves of the *Cannabis sativa L.* plant (sativa or indica varieties); The Controlled Substances Act was enacted as Title II of the Comprehensive Drug Abuse Prevention and Control Act of 1970; 84 s. 1236 (1970).

<sup>4</sup> National Conference of State Legislatures (NCSL), *State Industrial Hemp Statutes*, available at <http://www.ncsl.org/research/agriculture-and-rural-development/state-industrial-hemp-statutes.aspx> (last visited Mar. 10, 2023).

<sup>5</sup> Centers for Disease Control and Prevention (CDC), *CBD: What You Need to Know*, <https://www.cdc.gov/marijuana/featured-topics/CBD.html> (last visited Mar. 18, 2023).

<sup>6</sup> Section 581.217(3)(e), F.S.

<sup>7</sup> *Id.*

<sup>8</sup> 7 U.S.C. s. 5940 (2014); Mindy Bridges and Karmen Hanson, *Regulating Hemp and Cannabis-Based Products*, NCSL (April 2022), available at [https://documents.ncsl.org/wwwncsl/Agriculture/lb\\_2537.pdf](https://documents.ncsl.org/wwwncsl/Agriculture/lb_2537.pdf) (last visited Jan. 29, 2019).

<sup>9</sup> Chapter 2017-124, Laws of Fla.; s. 1004.4473, F.S.

<sup>10</sup> Section 1004.4473(2)(a), F.S.

legalized hemp as an agricultural product, the law did not legalize CBD generally.<sup>11</sup> CBDs derived from hemp are considered legal if the hemp is grown by a licensed grower, produced in a manner that is consistent with the 2018 Farm Bill, and complies with other federal and state regulations.<sup>12</sup>

In 2019, the Legislature created the state hemp program within DACS,<sup>13</sup> which was approved by the Secretary of the United States Department of Agriculture in 2020.<sup>14</sup> To grow hemp in Florida, each potential hemp grower must obtain a cultivation license from DACS.<sup>15</sup> Within 30 days prior to harvest, DACS, or its agent, is required to collect a representative sample from each lot to be tested for total delta-9 THC concentration.<sup>16</sup> DACS, or its agent, will then send those samples to an independent testing laboratory,<sup>17</sup> and if the sample comes back with an acceptable level of THC, the hemp grower may harvest their hemp crop.<sup>18</sup>

### Sale of Hemp Extract Products

Hemp extract products are available throughout the state in various forms, including, but not limited to, oils, lotions, and gummies. Hemp extract products may only be distributed in the state if the product has a certificate of analysis prepared by an independent testing laboratory that verifies the hemp extract does not exceed 0.3 percent total delta-9 THC on a dry weight basis; does not contain contaminants unsafe for human consumption; and the container includes, among other information, the expiration date and number of milligrams of each marketed cannabinoid per serving.<sup>19</sup> Hemp extract products meant for inhalation may not be sold to individuals under the age of 21.<sup>20</sup>

Since the passage of the 2018 Farm Bill and approval of the state hemp program, various other cannabinoid products have appeared on the market.<sup>21</sup> While such cannabinoids can naturally occur within the cannabis plant, certain cannabinoids like delta-8 THC are not found in significant amounts and must be synthetically derived from CBD.<sup>22</sup> The United States Food and Drug Administration (FDA) has issued a warning stating delta-8 THC products have not been approved by the FDA for safe use.<sup>23</sup> Additionally, the CDC recommends that all CBD and THC products are kept in childproof containers and are placed out of reach of children due to the unknown effect of such products on children.<sup>24</sup>

### Food Safety

DACS is the agency responsible for the enforcement of the production, manufacture, transportation, and sale of food. DACS's Division of Food Safety is directly responsible for assuring the public of a safe, wholesome, and properly represented food supply.<sup>25</sup> The division accomplishes this through the

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<sup>11</sup> 7 U.S.C. s. 1639o (2018).

<sup>12</sup> John Hudak, *The Farm Bill, hemp legalization and the status of CBD: An Explainer*, Brookings Dec. 14, 2018, available at <https://www.brookings.edu/blog/fixgov/2018/12/14/the-farm-bill-hemp-and-cbd-explainer/> (last visited Mar. 10, 2023).

<sup>13</sup> Ch. 2019-132, L.O.F.

<sup>14</sup> USDA, *Status of State and Tribal Hemp Production Plans for USDA Approval*, <https://www.ams.usda.gov/rules-regulations/hemp/state-and-tribal-plan-review> (last visited Mar. 9, 2023); USDA, *Florida State Hemp Plan*, available at <https://www.ams.usda.gov/sites/default/files/media/FloridaStateHempPlan.pdf> (last visited Mar. 9, 2023).

<sup>15</sup> Rule 5B-57.014(4), F.A.C.

<sup>16</sup> Rule 5B-57.014(8)(a), F.A.C.

<sup>17</sup> See Rule 5B-57.014(1)(d), F.A.C. for lab requirements. See also DACS, *Approved Designated Laboratories for THC Testing*, available at <https://www.fdacs.gov/content/download/92484/file/approved-designated-labs-01-18-2023.pdf> (last visited Mar. 10, 2023).

<sup>18</sup> Rule 5B-57.014(8)(g), F.A.C.

<sup>19</sup> Section 581.217(7), F.S.

<sup>20</sup> Section 581.217(7)(c), F.S.

<sup>21</sup> The federal and state hemp regulations do not specifically address THCs other than delta-9 THC in the definition of hemp, which has caused debate and concern among various stakeholders. The United States Drug Enforcement Agency (DEA) recently listed delta-8 THC as a Schedule I narcotic in the Orange Book. DEA, *Controlled Substances* (last updated Feb. 15, 2023), available at [https://www.deadiversion.usdoj.gov/schedules/orangebook/c\\_cs\\_alpha.pdf](https://www.deadiversion.usdoj.gov/schedules/orangebook/c_cs_alpha.pdf) (last visited Mar. 18, 2023).

<sup>22</sup> United States Food and Drug Administration (FDA), *5 Things to Know about Delta-8 Tetrahydrocannabinol-Delta-8 THC*, <https://www.fda.gov/consumers/consumer-updates/5-things-know-about-delta-8-tetrahydrocannabinol-delta-8-thc> (last visited Mar. 10, 2023).

<sup>23</sup> *Id.*

<sup>24</sup> CDC, *CBD: What You Need to Know*, <https://www.cdc.gov/marijuana/featured-topics/CBD.html> (last visited Mar. 18, 2023).

<sup>25</sup> DACS, *Division of Food Safety*, <https://www.fdacs.gov/Divisions-Offices/Food-Safety> (last visited March 10, 2023).

permitting and inspection of food establishments, the inspection and evaluation of food products, and the performance of specialized laboratory testing on a variety of food products sold or produced in Florida. The division also proactively monitors food from manufacturing and distribution to retail.

## **Effect of the Bill**

The bill specifies that the definition of food includes hemp extract, which allows DACS to regulate hemp extract as a food product under its food safety regulations, and requires time and temperature control for the safety and integrity of the product.

The bill revises the definition of hemp to specify that hemp extract may not exceed 0.3 percent total delta-9 THC on a wet weight basis.

The bill defines “attractive to children” to mean manufactured in the shape of humans, cartoons, or animals; manufactured in a form that bears any reasonable resemblance to an existing candy product that is familiar to the public as a widely distributed, branded food product such that a product could be mistaken for the branded product, especially by children; or containing any color additives.

The bill requires any hemp extract that will be distributed and sold in the state to have come from a batch that was processed in a facility that holds a current and valid permit issued by a human health or food safety regulatory entity with authority over the facility, and that meets the human health or food safety sanitization requirements of the regulatory entity. Such compliance must be documented by a report from the regulatory entity confirming that the facility meets such requirements. The bill requires hemp extract to be distributed and sold in a container that is suitable to contain products for human consumption, is composed of materials designed to minimize exposure to light, mitigates exposure to high temperatures, is not attractive to children, and is compliant with the United States Poison Prevention Packaging Act of 1970, without regard to provided exemptions. The bill specifies that hemp extract may only be sold to a business in the state if that business is properly permitted.

The bill specifies that hemp extract products for human ingestion, including, but not limited to, snuff, chewing gum, and other smokeless products, may not be sold to anyone under 21 years of age. The bill specifies that any hemp extract products sold in violation of these regulations are subject to embargo, detainment, or destruction. Additionally, such products found to be mislabeled or attractive to children are subject to immediate stop sale.

The bill requires DACS to adopt rules for the State Hemp Program that provide packaging and labeling requirements that ensure that hemp extract intended for human ingestion or inhalation is not attractive to children and advertising regulations that ensure hemp extract intended for human ingestion or inhalation is not marketed or advertised in a manner that specifically targets or is attractive to children.

## **B. SECTION DIRECTORY:**

- Section 1. Amends s. 500.03, F.S., to specify hemp extract is a food product and must follow food safety protocols.
- Section 2. Amends s. 581.217, F.S., to specify hemp extract regulations.
- Section 3. Reenacts s. 893.02, F.S.
- Section 4. Provides an effective date of July 1, 2023.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

- 1. Revenues:  
None.

2. Expenditures:

The bill may have an indeterminate negative fiscal impact on DACS related to the regulation of hemp as a food product that can be absorbed within existing resources.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may have an indeterminate negative fiscal impact on the private sector associated with the new packaging requirements of the bill.

D. FISCAL COMMENTS:

None.

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to affect county or municipal government.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill requires DACS to adopt rules related to new packaging requirements for hemp extract and calculations for total cannabinoids.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

### IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On March 27, 2023, the Agriculture, Conservation & Resiliency Subcommittee adopted an amendment and reported the bill favorably as a committee substitute. The amendment:

- Revised the definitions of synthetically derived cannabinoid and total THC;
- Specified that hemp extract products must be compliant with the U.S. Poison Prevention Packaging Act of 1970, without any exceptions;
- Increased the limit on the amount of THC that hemp extract products may contain from .5 milligrams per serving to 5 milligrams per serving, and from 2 milligrams per package to 50 milligrams per package; and
- Specified the cannabinoids DACS must address in its rulemaking.

On April 17, 2023, the Infrastructure Strategies Committee adopted a strike-all amendment and reported the bill favorably as a committee substitute. The amendment:

- Removed definitions for “synthetically derived cannabinoid” and “total THC”;
- Defined “attractive to children”;

- Specified that hemp extract products distributed or sold in violation of hemp extract rules and regulations are subject to embargo, detainment, or destruction and, if such products are found to be mislabeled or attractive to children, subject to immediate stop sale; and
- Removed THC limits on hemp extract products.

This analysis is drafted to the committee substitute as approved by the Infrastructure Strategies Committee.